HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION NO.27307 OF 2005

Between:

Smt. V. Ramalakshmi @ Adhilakshmi ... Petitioner

and

District Judge, Visakhapatnam
and another ... Respondents

:: ORDER ::

Counsel for the petitioner : Sri P. Veera Reddy

Counsel for respondent Nos.1 and 2: Sri C.V. Nagarjuna Reddy, Standing Counsel

Dated: 27-03-2006

Per G. Bhavani Prasad, J

Feeling aggrieved by the rejection of her application for compassionate appointment by District Judge, Visakhapatnam, the petitioner, Smt. V. Ramalakshmi @ Adhilakshmi D/o V. Suryanarayana has filed this petition under Article 226 of the Constitution of India.

For deciding the petitioner's entitlement to be appointed on compassionate ground, we may briefly notice the facts. While he was working as night watchman in the Court of Metropolitan Magistrate, Visakhapatnam, the petitioner's father Sri V. Suryanarayana died on 23.3.2002. After about six months, she submitted an application to the District Judge for appointment on compassionate ground, who dismissed the same vide his order dated 1.7.2003 by observing that after her marriage, the petitioner cannot be treated as dependant on her father. The District Judge also held that the petitioner is not entitled to be appointed on compassionate ground because the family of the deceased is in receipt of pension. After six months, the petitioner submitted another application dated 3.1.2004 for reconsideration of her claim for compassionate appointment. She submitted that in terms of Government Memo dated 8.10.2003 issued by the General Administration Department, one of the dependant married daughters can be considered for appointment on

compassionate ground if spouse of the deceased employee is not willing to avail such appointment. Smt. V. Ramanamma, the wife of the deceased submitted an application dated 06-6-2003 stating that due to her ill-health and advancement of age, she is unable to take up the employment and requested to provide compassionate appointment to her only daughter, Smt. V. Ramalakshmi.

The application of the petitioner appears to have been forwarded to the High Court for relaxation of the educational qualifications. The High Court relaxed the requirement of qualification, but after some correspondence, the District Judge again rejected the petitioner's application by observing that she cannot be treated as a dependant of the deceased employee.

In the affidavit filed by her, the petitioner has averred that in view of the relaxation granted by the High Court, the District Judge is bound to reconsider her claim for appointment on compassionate ground because her husband is earning meagre income of Rs.1,000/- per month which is not at all sufficient for maintaining the family.

In his counter-affidavit, the District Judge, Visakhapatnam narrated the facts leading to the passing of order vide which the petitioner's application was rejected. According to the District Judge, the petitioner cannot be treated as a dependant of late Shri V. Surayanarayana and, in any case, she is not entitled to take benefit of the policy of compassionate appointment, because her husband is earning sufficient amount for sustaining the family.

Sri P. Veera Reddy, learned counsel for the petitioner strenuously contended that the beneficial scheme of compassionate appointment should be liberally construed and the claim of the only daughter of the deceased employee, though married, should be accepted by treating her as dependant of the deceased employee. He submitted that the rejection of the petitioner's application by the District

Judge should be declared as arbitrary because he ignored the fact that the earning of her husband was wholly insufficient to sustain the family.

Sri C.V. Nagarjuna Reddy, learned counsel for the respondents defended the decision of the District Judge not to entertain the petitioner's application and submitted that the Court should not direct appointment of the petitioner merely because her husband's income is inadequate.

We have carefully perused the record and gave our anxious consideration to the submissions of the learned counsel for the parties. In our opinion, the District Judge did not commit any illegality by refusing to entertain the petitioner's prayer for compassionate appointment. In her representation dated 15.11.2002, the petitioner did claim that she was dependant on her father and after his death; she was living with her mother. In the second representation, which was received by the District Judge on 23.5.2003, the petitioner claimed that her children also were dependent on her father along with her and her mother. However, the legal heir certificate issued by the Mandal Revenue Officer, Visakhapatnam Urban dated 07-9-2002 showed that the petitioner is living separately and gave her consent to issue the legal heir certificate in favour of her mother. The petitioner's mother was declared as the legal heir of late Sri V. Suryanarayana. In his order dated 1.7.2003, the District Judge noted that the petitioner is living with her husband and held that she cannot be treated as dependant of her father. He referred to the decision of a Division Bench of this Court laying down that public employment should not be reduced as heritable property and only in the event of dire necessity and when the family is driven to destitution; such compassionate appointment should be made. In her further application dated 03-01-2004, the petitioner specifically stated that she, her children and her

mother are being maintained by her husband with the income from running an auto. She, of course, claimed that it is very difficult to live with the meagre income. The District Judge, Visakhapatnam in his letter to the High Court dated 20-5-2004 reiterated that the petitioner cannot be considered as a dependant of the deceased employee. In her representation to the High Court, dated 08-12-2004, the petitioner claimed her husband to be the only earning member of his family with liability to maintain his old parents, two younger brothers and two unmarried sisters, apart from she and her children. She stated that it is difficult to earn even Rs.50/- per day in Visakhapatnam by running an auto and if the petitioner's husband is getting Rs.50/- per day, the monthly income may be about Rs.1,500/-. The petitioner admitted in that representation that she, her children and her mother are receiving the pension of her father, which of course, was claimed to be insufficient.

Thus, the documents on record clearly show that the petitioner was married long prior to the death of Sri V. Suayanrayana and is living with her husband and that she and her two children are being maintained by the petitioner's husband with his income as an auto driver along with other members of his family. Though the contention of the petitioner that the income of her husband as an auto driver is insufficient to make a comfortable living may not be far from truth, she cannot, in any manner, be considered to be a dependant upon the deceased employee. It is also borne out from the record that the petitioner's mother who is living with the petitioner is also making available the family pension for the maintenance of the family. The District Judge, Visakhapatnam in his counter-affidavit stated the family pension to be Rs.2,350/- per month, apart from lump sum payments made to the petitioner's mother at Rs.69,325/- towards gratuity and Rs.53,944/- towards encashment of earned leave. Thus,

the income of the petitioner's husband stood supplemented by the lump sum payments of gratuity, encashment of earned leave and the regular family pension of the mother, due to which the wife and the daughter of the deceased employee cannot be considered to have fallen in distress on the death of the employee.

According to G.O.Ms. No.350 General Administration (Ser.A) Department, dated 30-7-1999, the only married daughter of the deceased Government employee can be considered for compassionate appointment, if the spouse of the employee is unwilling to avail the same, provided she is dependent on the deceased Government employee and subject to satisfying the other conditions and instructions issued by the scheme from time to time. In Memo No.116417/Ser.A/2003-1 of the General Administration (Ser.A) Department, dated 08-10-2003, it is clarified that the policy of the Government is to provide compassionate appointment to the dependants of the deceased Government employees to help the family in distress. The consolidated instructions on the scheme of compassionate appointment to the dependants of Government employee, who died in harness, issued in Circular Memo No.60681/Ser.A/2003-1, General Administration (Ser.A) Department, dated 12-8-2003 also make it clear that the only married daughter of the deceased Government employee may be considered for compassionate appointment provided she is dependent on the deceased Government employee. It is evident that the beneficial scheme only provided that such dependant "may be" considered and not that such dependant "shall be" considered for compassionate appointment and even that discretion to consider is plainly subject to the dependency of such person on the deceased Government employee. The basic requirement of the person claiming compassionate appointment being dependent on the deceased

Government employee by the time of his death or the fundamental pre-requisite of the family of the deceased employee falling in distress on the death of the employee in harness, cannot be considered to have been satisfied in any manner in the case of the petitioner herein. Therefore, the decision of the District Judge, Visakhpatnam to decline the petitioner's claim for compassionate appointment cannot be faulted.

In the result, the writ petition is dismissed.

As a sequel to the dismissal of the writ petition, W.P.M.P. No.35075 of 2005 is dismissed as infructuous.

G. BHAVANI PRASAD, J

Date: 27-3-2006

G.S. SINGHVI, CJ

Svv/vtv